

Pratt Institute and Pratt Institute Professional Association. Case 29-CA-7661

July 8, 1981

DECISION AND ORDER

Upon a charge filed on December 21, 1979, by Pratt Institute Professional Association, herein called the Union, and duly served on Pratt Institute, herein called Respondent, the General Counsel of the National Labor Relations Board, by the Regional Director for Region 29, issued a complaint on January 15, 1980, against Respondent, alleging that Respondent had engaged in and was engaging in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the National Labor Relations Act, as amended. Copies of the charge and the complaint and notice of hearing before an administrative law judge were duly served on the parties to this proceeding.

With respect to the unfair labor practices, the complaint alleges in substance that on August 31, 1979, following a Board election in Case 29-RC-4296, the Union was duly certified as the exclusive collective-bargaining representative of Respondent's employees in the unit found appropriate;¹ and that, commencing on or about December 14, 1979, and at all times thereafter, Respondent has refused, and continues to date to refuse, to bargain collectively with the Union as the exclusive bargaining representative, although the Union has requested and is requesting it to do so. On February 1, 1980, Respondent filed its answer to the complaint admitting in part, and denying in part, the allegations in the complaint.

On April 23, 1980, counsel for the General Counsel filed directly with the Board a Motion for Summary Judgment. Subsequently, on May 1, 1980, the Board issued an order transferring the proceeding to the Board and a Notice To Show Cause why the General Counsel's Motion for Summary Judgment should not be granted. Respondent thereafter filed a response to the Notice To Show Cause, and requested (1) that the Motion for Summary Judgment be denied; (2) that the complaint be dismissed and a new election ordered, excluding supervisors, managerial employees, and others allegedly improperly included in the unit; (3) that the complaint be dismissed with a direction that the

representation case be reopened to take additional testimony with respect to the supervisory status, managerial status, outside funding, community of interest, and/or laboratory issues; and (4) that such further and different relief be granted as may be proper.

Upon the entire record in this proceeding, the Board makes the following:

Ruling on Motion for Summary Judgment

In its memorandum of law in opposition to the Board's Notice To Show Cause, Respondent argues that the motion should be denied and the representation hearing be reopened to take testimony regarding the supervisory and managerial status of certain employees, with a new election ordered, based on the following reasons: (1) 19 employees were included in the unit by virtue of the Board's 50 percent out-of-unit supervision test; (2) the director of career planning and personnel and the associate director of Pratt Institute Center for Community and Environmental Development (PICCED) were allowed to vote subject to challenge, ignoring substantial uncontroverted evidence that such employees were supervisory or managerial; (3) external funding and a lack of community of interest required the exclusion of certain positions from the bargaining unit, i.e., particularly the exclusion of the Higher Education Opportunity Program (HEOP) and PICCED, as well as a cooperative education coordinator; and (4) various managerial positions were included in the unit contrary to the U. S. Supreme Court's decisions in *N.L.R.B. v. Bell Aerospace Co.*, 416 U.S. 267 (1974).

While it is clear that Respondent's first three arguments have been duly considered and previously found to be without merit by both the Regional Director and the Board, Respondent's argument that the Board lacks authority, under the Supreme Court's *Yeshiva* decision,² to find the composition of the unit here sought to be appropriate, merits additional comment.

In the *Yeshiva* case, the Union sought to represent a unit of full-time faculty members employed at 10 of the employer's 5 undergraduate and 8 graduate schools in New York City. Here, the unit sought is composed of nonfaculty administrative employees.

The Court found in *Yeshiva* that the record showed that the faculty of each school acted in a truly collegial capacity; deciding what courses would be offered; when the courses would be scheduled; and to whom they would be taught. Such faculty also determined teaching methods,

¹ Official notice is taken of the record in the representation proceeding, Case 29-RC-4296, as the term "record" is defined in Secs. 102.68 and 102.69(g) of the Board's Rules and Regulations, Series 8, as amended. See *LTV Electrosystems, Inc.*, 166 NLRB 938 (1967), enfd. 388 F.2d 683 (4th Cir., 1968); *Golden Age Beverage Co.*, 167 NLRB 151 (1967), enfd. 415 F.2d 26 (5th Cir. 1969); *Intertype Co. v. Penello*, 269 F.Supp. 573 (D.C.Va. 1967); *Follett Corp.*, 164 NLRB 378 (1967), enfd. 397 F.2d 91 (7th Cir. 1968); Sec. 9(d) of the NLRA, as amended.

² *N.L.R.B. v. Yeshiva University*, 444 U.S. 672 (1980).

grading policies, and matriculation standards. They decided which students would be admitted, retained, and graduated, the size of the student body, and the tuition to be charged, as well as questions regarding faculty tenure and promotions.

There are significant differences between the instant proceeding and the *Yeshiva* decision. Here, the Union seeks to represent no faculty members; rather, as the record shows, the unit sought consists of nonacademic administrative employees. Nor does the record show any sharing of collegial responsibility. Rather it indicates a group of administrative employees who in a routine manner in the ordinary courses of employment carry out decisions and implement standards already decided upon by higher authority.

We also note that lower courts in discussing the *Yeshiva* decision have expressed the belief that *Yeshiva* was meant to apply to a mature university, where the faculty, acting in a collegial capacity, governed the school in all its major aspects.³

We are of the opinion, therefore, that the Court in its *Yeshiva* decision did not intend to exclude from the protection of Section 7 of the Act, administrative employees exercising their duties in an institute of the type dealt with in the instant proceeding. It is also clear that the unit sought here differs in classification and authority from that dealt with in the Supreme Court's *Yeshiva* decision, and that Respondent has not presented any special circumstances which would have dictated a different result in the underlying representation case.

It is well settled that in the absence of newly discovered or previously unavailable evidence or special circumstances a respondent in a proceeding alleging a violation of Section 8(a)(5) is not entitled to relitigate issues which were or could have been litigated in a prior representation proceeding.⁴

All issues raised by Respondent in this proceeding were or could have been litigated in the prior representation proceeding with the exception of the *Yeshiva* issue which we have found lacks merit, and Respondent does not offer to adduce at a hearing any newly discovered or previously unavailable evidence, nor does it allege that any special circumstances exist herein which would require the Board to reexamine the decision made in the representation proceeding. We therefore find that Respondent has not raised any issue which is properly litigable in this unfair labor practice proceeding. Accordingly, we grant the Motion for Summary Judgment.

On the basis of the entire record, the Board makes the following:

FINDINGS OF FACT

I. THE BUSINESS OF RESPONDENT

Pratt Institute, also referred to herein as the Institute, is a private institution chartered by the State of New York, with its central administrative office and place of business in Brooklyn, New York, where it is engaged in the operation of a private, nonprofit, educational institution. The Employer, in the course and conduct of its operations, annually derives gross revenues in excess of \$1 million and imports goods valued in excess of \$50,000 directly from points outside the State of New York. The parties stipulated, and we find, that the Institute is engaged in commerce within the meaning of the Act and that it will effectuate the policies of the Act to assert jurisdiction herein.

We find, on the basis of the foregoing, that Respondent is, and has been at all times material herein, an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act, and that it will effectuate the policies of the Act to assert jurisdiction herein.

II. THE LABOR ORGANIZATION INVOLVED

Pratt Institute Professional Association is a labor organization within the meaning of Section 2(5) of the Act.

III. THE UNFAIR LABOR PRACTICES

A. The Representation Proceeding

1. The unit

The following employees of the Respondent constitute a unit appropriate for collective-bargaining purposes within the meaning of Section 9(b) of the Act:

Coordinator of Art Admissions, Admissions and Financial Aid Counselors, Coordinator of Transfer Evaluation, Coordinator of Graduate Admissions and Financial Aid, Programmers of the School of Art and Design, Placement Counselors for Career Planning and Placement, International Student Advisor, Bursar, Coordinator of Data Processing, Coordinators of Cooperative Education, Development Officer, Development Coordinator, Assistant to the Dean of the School of Engineering, Assistant to the Chairperson of the Foundation Department of the School of Art and Design, Counselor of the Higher Education Opportunity Program, Neighborhood Planner of the

³ *Stephens Institute v. N.L.R.B.*, 620 F.2d 720, 726 9th Cir. (1980); *Berry Schools v. N.L.R.B.*, 627 F.2d 692 (5th Cir. 1980).

⁴ See *Pittsburgh Plate Glass Co. v. N.L.R.B.*, 313 U.S. 146, 162 (1941); Rules and Regulations of the Board, Secs. 102.67(f) and 102.69(c).

Pratt Institute Center for Community and Environmental Development, Writer-Fund Raiser of the Pratt Institute Center for Community and Environmental Development, Coordinator of Student Affairs of the Pratt-New York Phoenix School of Design, Staff Accountant, Staff Writer of Public Affairs, Coordinator of the Integrative Studies Program, Director of Counseling and Student Development, Assistant Nurse, Senior Planner of the Pratt Institute Center for Community and Environmental Development, Architects of the Pratt Institute Center for Community and Environmental Development, employed at its Brooklyn and Manhattan locations, exclusive of all other employees, office clerical employees, confidential employees, managerial employees, guards and supervisors as defined in the Act.

2. The certification

On June 6, 1979, a majority of the employees of Respondent in said unit, in a secret-ballot election conducted under the supervision of the Regional Director for Region 29, designated the Union as their representative for the purpose of collective bargaining with the Respondent.

The Union was certified as the collective-bargaining representative of the employees in said unit on August 31, 1979, and the Union continues to be such exclusive representative within the meaning of Section 9(a) of the Act.

B. The Request To Bargain and Respondent's Refusal

Commencing on or about November 21, 1979, and at all times thereafter, the Union has requested the Respondent to bargain collectively with it as the exclusive collective-bargaining representative of all the employees in the above-described unit. Commencing on or about December 14, 1979, and continuing at all times thereafter to date, the Respondent has refused, and continues to refuse, to recognize and bargain with the Union as the exclusive representative for collective bargaining of all employees in said unit.

Accordingly, we find that Respondent has, since December 14, 1979, and at all times thereafter, refused to bargain collectively with the Union as the exclusive representative of the employees in the appropriate unit, and that, by such refusal, Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act.

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of Respondent, set forth in section III, above, occurring in connection with its operations described in section I, above, have a close, intimate, and substantial relationship to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

V. THE REMEDY

Having found that Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act, we shall order that it cease and desist therefrom, and, upon request, bargain collectively with the Union as the exclusive representative of all employees in the appropriate unit and, if an understanding is reached, embody such understanding in a signed agreement.

In order to insure that the employees in the appropriate unit will be accorded the services of their selected bargaining agent for the period provided by law, we shall construe the initial period for certification as beginning on the date Respondent commences to bargain in good faith with the Union as the recognized bargaining representative in the appropriate unit. See *Mar-Jac Poultry Company, Inc.*, 136 NLRB 785 (1962); *Commerce Company d/b/a Lamar Hotel*, 140 NLRB 226, 229 (1962), *enfd.* 328 F.2d 600 (5th Cir. 1964), *cert. denied* 379 U.S. 817 (1964); *Burnett Construction Company*, 149 NLRB 1419, 1421 (1964), *enfd.* 350 F.2d 57 (10th Cir., 1965).

The Board, upon the basis of the foregoing facts and the entire record, makes the following:

CONCLUSIONS OF LAW

1. Pratt Institute is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. Pratt Institute Professional Association is a labor organization within the meaning of Section 2(5) of the Act.

3. Coordinator of Art Admissions, Admissions and Financial Aid Counselors, Coordinator of Transfer Evaluation, Coordinator of Graduate Admissions and Financial Aid, Programmers of the School of Art and Design, Placement Counselors for Career Planning and Placement, International Student Advisor, Bursar, Coordinator of Data Processing, Coordinators of Cooperative Education, Development Officer, Development Coordinator, Assistant to the Dean of the School of Engi-

neering, Assistant to the Chairperson of the Foundation Department of the School of Art and Design, Counselor of the Higher Education Opportunity Program, Neighborhood Planner of the Pratt Institute Center for Community and Environmental Development, Writer-Fund Raiser of the Pratt Institute Center for Community and Environmental Development, Coordinator of Student Affairs of the Pratt-New York Phoenix School of Design, Staff Accountant, Staff Writer of Public Affairs, Coordinator of the Integrative Studies Program, Director of Counseling and Student Development, Assistant Nurse, Senior Planner of the Pratt Institute Center for Community and Environmental Development, Architects of the Pratt Institute Center for Community and Environmental Development, employed at its Brooklyn and Manhattan locations, exclusive of all other employees, office clerical employees, confidential employees, managerial employees, guards and supervisors as defined in the Act, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.

4. Since August 31, 1979, the above-named labor organization has been and now is the certified and exclusive representative of all employees in the aforesaid appropriate unit for the purpose of collective bargaining within the meaning of Section 9(a) of the Act.

5. By refusing on or about December 14, 1979, and at all times thereafter, to bargain collectively with the above-named labor organization as the exclusive bargaining representative of all the employees of Respondent in the appropriate unit, Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) of the Act.

6. By the aforesaid refusal to bargain, Respondent has interfered with, restrained, and coerced, and is interfering with, restraining, and coercing, employees in the exercise of the rights guaranteed to them in Section 7 of the Act, and thereby has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(1) of the Act.

7. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the Respondent, Pratt Institute, Brooklyn and Manhattan, New York, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Refusing to bargain collectively concerning rates of pay, wages, hours, and other terms and conditions of employment with Pratt Institute Professional Association as the exclusive bargaining representative of its employees in the following unit:

Coordinator of Art Admissions, Admissions and Financial Aid Counselors, Coordinator of Transfer Evaluation, coordinator of Graduate Admissions and Financial Aid, Programmers of the School of Art and Design, Placement Counselors for Career Planning and Placement, International Student Advisor, Bursar, Coordinator of Data Processing, Coordinators of Cooperative Education, Development Officer, Development Coordinator, Assistant to the Dean of the School of Engineering, Assistant to the Chairperson of the Foundation Department of the School of Art and Design, Counselor of the Higher Education Opportunity Program, Neighborhood Planner of the Pratt Institute Center for Community and Environmental Development, Writer-Fund Raiser of the Pratt Institute Center for Community and Environmental Development, Coordinator of Student Affairs of the Pratt-New York Phoenix School of Design, Staff Accountant, Staff Writer of Public Affairs, Coordinator of the Integrative Studies Program, Director of Counseling and Student Development, Assistant Nurse, Senior Planner of the Pratt Institute Center for Community and Environmental Development, Architects of the Pratt Institute Center for Community and Environmental Development, employed at its Brooklyn and Manhattan locations, exclusive of all other employees, office clerical employees, confidential employees, managerial employees, guards and supervisors as defined in the Act.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them in Section 7 of the Act.

2. Take the following affirmative action which the Board finds will effectuate the policies of the Act:

(a) Upon request, bargain with the above-named labor organization as the exclusive representative of all employees in the aforesaid appropriate unit with respect to rates of pay, wages, hours, and other terms and conditions of employment, and, if an understanding is reached, embody such understanding in a signed agreement.

(b) Post at its Brooklyn and Manhattan locations copies of the attached notice marked "Appendix."⁵ Copies of said notice, on forms provided by the Regional director for Region 29, after being duly signed by Respondent's representative, shall be posted by Respondent immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to insure that said notices are not altered, defaced, or covered by any other material.

(c) Notify the Regional Director for Region 29, in writing, within 20 days from the date of this Order, what steps have been taken to comply herewith.

⁵ In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD An Agency of the United States Government

WE WILL NOT refuse to bargain collectively concerning rates of pay, wages, hours, and other terms and conditions of employment with Pratt Institute Professional Association, as the exclusive representative of the employees in the bargaining unit described below.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of the rights guaranteed them by Section 7 of the Act.

WE WILL, upon request, bargain with the above-named Union, as the exclusive representative of all employees in the bargaining

unit described below, with respect to rates of pay, wages, hours, and other terms and conditions of employment, and, if an understanding is reached, embody such understanding in a signed agreement. The bargaining unit is:

Coordinator of Art Admissions, Admissions and Financial Aid Counselors, Coordinator of Transfer Evaluation, Coordinator of Graduate Admissions and Financial Aid, Programmers of the School of Art and Design, Placement, Counselors for Career Planning and Placement, International Student Advisor, Bursar, Coordinator of Data Processing, Coordinators of Cooperative Education, Development Officer, Development Coordinator, Assistant to the Dean of the School of Engineering, Assistant to the Chairperson of the Foundation Department of the School of Art and Design, Counselor of the Higher Education Opportunity Program, Neighborhood Planner of the Pratt Institute Center for Community and Environmental Development, Writer-Fund Raiser of the Pratt Institute Center for Community and Environmental Development, Coordinator of Student Affairs of the Pratt-New York Phoenix School of Design, Staff Accountant, Staff Writer of Public Affairs, Coordinator of the Integrative Studies Program, Director of Counseling and Student Development, Assistant Nurse, Senior Planner of the Pratt Institute Center for Community and Environmental Development, Architects of the Pratt Institute Center for Community and Environmental Development, employed at its Brooklyn and Manhattan locations, exclusive of all other employees, office clerical employees, confidential employees, managerial employees, guards and supervisors as defined in the Act.

PRATT INSTITUTE